

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  CHOICETEL, LLC	DOCKET NOS. TCU-01-6 TF-01-136 (TF-01-87) WRU-01-15-3537
------------------------------	--

**ORDER APPROVING APPLICATION, TARIFF, CONCURRENCE IN MAPS,  
GRANTING WAIVERS, AND ISSUING CERTIFICATE**

(Issued May 14, 2001)

On March 19, 2001, Choicetel, LLC (Choicetel), filed an application for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29, stating its intention to provide local exchange services throughout the state of Iowa. The application has been identified as Docket No. TCU-01-06. Choicetel indicates that it will be offering its local exchange service in the service area of Qwest Corporation (Qwest) and it will support a 2-PIC methodology for dialing parity.

Choicetel has provided the qualifications of its company officers and financial statements. Additionally, Choicetel states that it intends to adopt the local exchange maps and descriptions and any subsequent modifications to the maps of Qwest. Choicetel filed a proposed tariff with the rates and service to be provided concurrently with the application. The proposed tariff was identified as Docket No. TF-01-87. Choicetel filed a complete new proposed tariff with revisions on May 8, 2001. The revised proposed tariff was identified at Docket No. TF-01-136.

Iowa Code § 476.29(2) provides that the local exchange carrier shall not be denied a certificate if the Utilities Board (Board) finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with public interest."

The Board has reviewed Choicetel's application and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. The Board finds that it is in with the public interest to approve the application and issue Choicetel a certificate of convenience and necessity.

Choicetel has requested three waivers identified as Docket No. WRU-01-15-3537. Choicetel requested a waiver of 199 IAC 16.5(2), which requires it to use a prescribed system of accounts, stating it employs an accounting system in accordance with generally accepted accounting principles (GAAP). The Board finds that this waiver should be granted since records kept in accordance with GAAP are acceptable for a competitive local exchange service provider.

Choicetel has requested that the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in the state of Iowa. The Board will grant the waiver based upon the statement of Choicetel that it will make the records available to the Board upon request.

Choicetel also requested the Board waive 199 IAC 22.3(1), requiring it to independently publish a directory. Choicetel states that it will make arrangements for its customers to be published in Qwest's directories. The Board will grant this waiver since Choicetel does not have a sufficient number of customers to warrant publishing

a directory and will be making arrangements to have its customers listed in the local directory.

Rule 199 IAC 1.3 states that the Board may grant a waiver if it finds based upon clear and convincing evidence that the application of the rule would pose an undue hardship and would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests described above and finds that the waivers meet the four criteria of the rule and the evidence in support of the waivers is clear and convincing.

Adherence to these four rules would be an undue hardship on a competitive telecommunications company just beginning to do business in Iowa. It would be an undue hardship for such companies to keep a separate set of books just for Iowa, to maintain a separate office in Iowa, and to publish a directory for just their customers. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantial equal protection for health, safety, and welfare provided, since the actions waived will be completed under different circumstances.

Choicetel states that it will initially provide service in the Qwest service area and states it will adopt the exchange maps and future modifications to the exchange maps and service area maps of Qwest. Iowa Code § 476.29(4) requires that each

certificate define the service territory in which landline local telephone service will be provided and authorizes the Board to promulgate rules establishing requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have on file with the Board maps that show exchange boundaries. The Board finds that by the adoption of the exchange service maps of Qwest, Choicetel has complied with the requirements of Board rules and Iowa statutes.

Choicetel has filed a proposed tariff, Docket No. TF-01-136, to provide local exchange service. The Board has reviewed the tariff and finds that it complies with the Board's rules on filing and processing of tariff pages. Since the Board has approved Choicetel's application, tariff, and concurrence in the maps of Qwest, the Board will grant Choicetel a certificate of public convenience and necessity. Certificate No. 0233 will be issued concurrently with this order.

**IT IS THEREFORE ORDERED:**

1. The application for a certificate of public convenience and necessity filed by Choicetel, LLC, on March 19, 2001, is approved as described in this order.
2. The proposed tariffs filed to provide local exchange service are approved.
3. The waiver of 199 IAC 16.5(2), 18.2, and 22.3(1) is granted as described in this order.
4. The concurrence in the exchange and service area maps of Qwest Corporation is approved.

5. A certificate, identified as Certificate No. 0233, is issued to Choicetel, LLC, concurrently with this order.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper  
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 14<sup>th</sup> day of May, 2001.